

**Remarks****Applicant's Invention:**

Applicants' invention relates to liquid termidicide compositions comprising a pyrethroid and a neonicotinoid, the use of which result in an increase in termite mortality at low application rates and a continuous chemical barrier of the termiticide in soil surrounding and beneath a structure in a locus where termites are suspected or known to exist. The species elected for prosecution in the instant application are the pyrethroid bifenthrin and the neonicotinoid imidacloprid.

**Status of the Pending Claims:**

Claims 1-27 were pending. Following entry of Applicants' previous elections of species to prosecute in light of a restriction requirement, claims 6-9, 15-18, and 24-27 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to non-elected species. Applicants' response is therefore directed to the rejection of claims 5, 10-14, and 19-23 to reflect the election of species. Claims 1-4, 11-13, and 20-22 have been cancelled. New claims 28 and 29 are presented. Following entry of the submitted amendments, claims 5, 10, 14, 19, 23, 28, and 29 are pending. Reconsideration is respectfully requested in view of the above amendments and the following remarks.

**Consideration under 35 USC 102(e)/103(a):**

Claims 1-5, 10-14, and 19-23 stand rejected under 35 USC 102(e) as anticipated by or, in the alternative, obvious under 35 USC 103(a) as obvious over ASRAR *et al.* US6660690. The Examiner relies on the above references to teach and/or render obvious the claimed liquid termiticide compositions. Applicants respectfully traverse this rejection.

ASRAR *et al.* US6660690 discloses a method of preventing damage to the seed and/or shoots and foliage of a plant by a plant pest by treating the seed or plant parts with an insecticidal composition. The disclosure is wholly directed to protecting seeds and/or shoots and foliage

of plants from damage and is not directed at a termicide composition related to protecting structures. This is despite the mention of termites in col 23, lines 23-27 and Composition #77. Taken as a whole, the disclosure does not anticipate Applicants' claims as amended. The Examiner alternatively rejects the claims under 35 USC 103(a) as obvious over ASRAR *et al.* US6660690. Applicants respectfully maintain that the reference fails to disclose or suggest the claimed composition or methods. The reference disclosure in all cases focuses on contacting or coating seeds with any of the 825 disclosed compositions for protection against any pest that feeds on the seed, etc of a plant. However, the disclosure does not teach or suggest use of the composition with regard to the protection of structures from termites. Accordingly, Applicants request that the rejection be withdrawn.

**Consideration under 35 USC 103(a):**

Claims 1-4, 10-13, and 19-22 stand rejected under 35 USC 103(a) as being unpatentable over AU22 12-9965409. The Examiner relies on the reference to render obvious the claimed insecticidal composition and method for controlling termites. Applicants respectfully traverse this rejection.

AU 12-9965409 discloses anti-pest formulations comprising phenolic compounds and other anti-pest agents for use as adhesives used to produce wooden materials and wood composites. Taken as a whole, the disclosure does not teach or suggest Applicants' claimed invention which is directed to the protection of structures from termite damage from treatment of the soil adjacent, surrounding, or beneath the structure to be protected from termites. Although the elected species compounds, imidacloprid and bifenthrin, are listed individually as "examples of anti-insect and anti-termite agents" in the reference disclosure, no teaching or suggestion is advanced that these two compounds be used concurrently with the phenolic material. It is not understood where the disclosure of "fleaspot on formulations" is found in the referenced disclosure. Furthermore, the compositions disclosed contain compounds at

concentrations far higher than those claimed by Applicants for the control of soil-borne termites. Accordingly, Applicants request that the rejection be withdrawn.

**Consideration under 35 USC 103(a):**

Claims 1-5, 10-14, and 16-23 stand rejected under 35 USC 103(a) as being unpatentable over *Jaetsch et al.* US 200100272 in view of *ODA et al.* JP 2000141317. The Examiner relies on the combination of the above references to render obvious the claimed insecticidal composition and method for controlling termites. Applicants respectfully traverse this rejection.

The citation of the species compounds as anti flea spot on formulations is not relevant to Applicants' claimed invention. Applicants' invention is directed to the use of the composition to prevent damage from soil-borne termites in soil adjacent, surrounding, or beneath the structure to be protected.

Accordingly, Applicants request that the rejection be withdrawn.

**Submission of Two References Listed on Previously Submitted IDS:**

Applicants have provided copies of the two references (Greene and Herzog, 1999; Greene et al., 1999) lined out in the previously submitted IDS and regret any inconvenience caused the Examiner by their absence.

Should the Examiner have any questions, the Examiner is invited to telephone Applicants' undersigned representative.

Respectfully submitted,



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